

# Erie County Republican Committee

P.O. Box 1987 • Erie, PA 16507 • 814-504-1542

July 6, 2007

Ms. Thomasenia P. Duncan  
General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

MUR # 5925

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2007 JUL 16 A 9 59

Re: Complaint Against Kyle Foust Exploratory Committee

Dear Ms. Duncan:

The Erie County Republican Party, by and through Chairman Brad Moore, hereby brings this complaint pursuant to 2 U.S.C. § 437g(a)(1) against the Kyle Foust Exploratory Committee.

Kyle Foust is a potential candidate for the United States Congress from the 3<sup>rd</sup> Congressional District of Pennsylvania. He has established an exploratory committee, the Kyle Foust Exploratory Committee ("Foust Committee") and is soliciting contributions and making expenditures on behalf of his campaign. The Kyle Foust Exploratory Committee is not registered with the Federal Election Commission ("FEC" or "Commission").

The Foust Committee recently paid for a mail piece stating his decision to form an exploratory committee to "gauge the viability of [his] candidacy" for the 3<sup>rd</sup> Congressional District. (Attachment 1, Kyle Foust Exploratory Committee Letter). The mail piece contains a solicitation for contributions and instructs recipients to learn more about his background on his County Council Re-Election website.

As explained below, there are at least three violations of the Federal Election Campaign Act, as amended by the Bipartisan Campaign Reform Act of 2002 ("the Act") and FEC regulations, including:

- The use of his county council reelection website to campaign for federal office
- Failure to place a box around the "paid for by" portion of the disclaimer
- The omission of the required IRS disclaimer

1. Use of County Council Reelection Website to Promote Federal Campaign

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Kyle Foust's mail piece directs individuals to "visit [his] County Council Re-Election website at [www.kylefoust.com](http://www.kylefoust.com)" in order to learn more about him. This is a blatant violation of the Act and FEC regulations.

Federal candidates, including individuals who are "testing the waters" may only raise and spend funds subject to the federal contribution limitation requirements; *i.e.*, \$2,300 per election from individuals and nonmulticandidate PACs, and \$5,000 per election from multicandidate PACs. 11 C.F.R. § 100.72(a) and 100.131(a). Moreover, the Act and FEC regulations specifically prohibit a candidate from transferring funds from a campaign committee for a nonfederal election to a campaign committee for a federal election. 11 C.F.R. § 110.3(d).

This is exactly what Foust has done. Foust is using his county council re-election website to promote his federal campaign, and by doing so, is using contributions raised in a nonfederal campaign for a federal campaign. This is in direct violation of the Act and FEC regulations.

2. Failure to Follow FEC and IRS Disclaimer Requirements

a. Disclaimer must be within a printed box: Federal committees are required to place disclaimers on public communications stating who actually paid for the communication. In printed communications, the disclaimer must be set off in a printed box, and the text must be of a sufficient size to be "clearly readable" to the recipient. There must also be a reasonable degree of color contrast between the text of the communication and the background. 11 C.F.R. § 110.11(c)(2)(ii), (iii). A disclaimer in 12 point font printed in black on a white background will meet the FEC's safe harbor requirement.

The Kyle Foust mailing failed to put the "Paid for by" disclaimer in a printed box as required by FEC regulations. This is in direct violation of the bright-line regulations governing disclaimers and has been taken seriously by the Commission. For example, the Commission recently fined the Martin Frost Campaign Committee \$6,000 for failure to place the box around the disclaimer on three commercial mailings, even though the disclaimer was printed correctly. *See* MUR 5547.

b. Failure to Comply with IRS Notice Requirements

The Internal Revenue Code requires political committees whose gross annual receipts exceed \$100,000 to include a notice that informs contributors that contributions are not tax deductible. 26 U.S.C. § 6113. This requirement is enforced by the IRS and failure to comply may result in substantial penalties. The IRS notice is usually placed on all solicitations to ensure contributors are aware that their contributions are not tax deductible.

While the FEC is not ultimately responsible for enforcing this requirement, the Foust campaign's failure to include this disclaimer illustrates the campaign's disregard and indifference to the Act, FEC regulations and guidance offered by the Commission.

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3. Conclusion

We respectfully request that the Commission find reason to believe that Federal law has been violated and take the appropriate legal action.

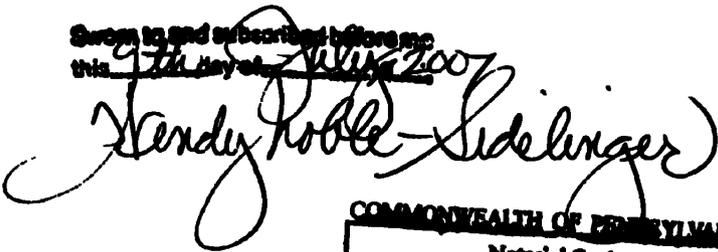
The foregoing is correct and accurate to the best of my knowledge, information and belief.

Respectfully,



Bradley R. Moore  
Chairman  
Erie County Republican Committee

Sworn to and subscribed before me  
this 9th day of July 2007



COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Wendy Noble-Sidelinger, Notary Public  
City of Erie, Erie County  
My Commission Expires Sept. 27, 2007

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# Kyle Foust Congressional Exploratory Committee

5517 Zemville RD, Erie, PA 16509

kylefoust@hotmail.com

FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

2007 JUL 16 A 9 59

Dear Friend:

Thank you. Your support has made my work as an Erie County Councilman productive and meaningful. I look forward to continuing our work together. Over these years, many of you have asked me to consider a run for Congress in Pennsylvania's 3<sup>rd</sup> District. While I'm committed to Erie County and all that we've accomplished, I've heard you.

I have decided to form a Congressional Exploratory Committee. The purpose of the Committee is to gauge the viability of my candidacy by raising funds to conduct issue research and meet people throughout the district. Many people have been eager to help. I've attached a list in the hope you will consider joining your many friends and family already committed.

It's no secret we need better representation in Pennsylvania's 3<sup>rd</sup> Congressional District. By coming together now, we can send a powerful message about our desire to focus on what we care about - our goals, our values. Today's political reality is this: fundraising efforts must begin well before Election Day. I'm asking for your help. Your contribution to my Exploratory Committee - your public pledge of support - will impact the viability of my candidacy.

I've had the opportunity these past few weeks to visit with supporters, elected officials, and party committee leaders across the region. They know me and are excited about this opportunity to create change on the federal level. Some of you may be less familiar with my background and record as a public official. I encourage you to visit my County Council Re-Election website at [www.kylewoust.com](http://www.kylewoust.com). Additional information on my public record can be obtained on the website of the Erie Times-News at [www.goerie.com](http://www.goerie.com) and by searching for "Kyle Foust."

Please do not hesitate to call me directly at home 814-899-4519, or send me an e-mail at [kylefoust@hotmail.com](mailto:kylefoust@hotmail.com). I'm also happy to address a group and answer questions in person. To be added to the Exploratory Committee list, just send an email and I'll add your name. I do hope to hear from you.

Thank you for your time and consideration.

Warm Regards:

*Kyle Foust*

Kyle W. Foust

**PS I've enclosed an envelope for your contribution. \$25, \$50, \$100 or whatever you're comfortable giving will go a long way in demonstrating the 3<sup>rd</sup> congressional district is committed to change. Please mail your check today.**

*Note: Federal campaign law requires that individual contributions not exceed \$2300 per election cycle or \$5000 for PAC contributions.*

To comply with Federal Law, we must use our best efforts to obtain, maintain and submit the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 per election cycle.

Name \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Occupation \_\_\_\_\_ Employer \_\_\_\_\_

E-Mail \_\_\_\_\_ Phone \_\_\_\_\_

Please identify which election cycle to designate this contribution. (check one)

- Primary Election 2008
- General Election 2008

Level of Contribution:  \$200  \$500  \$1000  \$2300  \$5000

Paid for by the Kyle Foust Congressional Exploratory Committee



**Kyle Foust Congressional Exploratory Com.**

5517 Zemville Drive

Erie, PA 16509



**Kyle Foust Congressional Exploratory Com.**

5517 Zemville Drive

Erie, PA 16509

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# Kyle Foust Congressional Exploratory Committee

5517 Zemville RD, Erie, PA 16509

kylefoust@hotmail.com

**Fiore Leone**  
Chairman,  
Erie County Council

**Joe Giles**  
Erie County Councilman,  
2<sup>nd</sup> District

**Susan DiVecchio**  
Erie City Treasurer

**Joseph Schember**  
Erie City Councilman

**Chip Folletti**  
Business Manager,  
Carpenters Local #81

**Mike Alberico**  
Business Manager,  
IBEW Local # 56

**Vincent Kennerknecht**  
Chairman, Center Erie Co.  
Democratic Committee

**David and Jean Eller**  
Center Erie County  
Democratic Committeespersons

**Rob McGahen**  
Harbor Creek School Director

**Brenda English**  
Erie County, Girard Twp.

**Gerald D. Lee III**  
Erie County, City of Erie

**Rob Brim**  
Erie County, Fairview Twp.

**Kevin Caridad**  
Butler County

**Edison Nicholson III**  
Academic Support Center  
Erie County, City of Erie

**Heather Hancock**  
Erie Co., Harborcreek Twp.

**Evan Adair**  
Erie Co., Millcreek Township

**Pat Harkins**  
PA State Rep., 1<sup>st</sup> District

**Linda Bebk-Jones**  
Former PA State  
Representative, 1<sup>st</sup> District

**David Gonzalez**  
Erie City Councilman

**Pat Cappabianca**  
Erie City Councilman

**Jeanine McCreary**  
Erie City School Director

**Karen Dorich**  
President, AFSCME  
Local #2666

**Al and Peggy Richardson**  
Erie County, City of Erie

**Joe Lesniewski**  
WWII, "Band of Brothers" Veteran

**Dave Chiaromonte**  
Erie County, Summit Twp.

**Michael Pennock**  
Erie County, Contractor

**Kevin and Barbara Kantz**  
West Erie Co. Democratic Committee

**Jeffrey Misko, Esq.**  
Erie County, City of Erie

**Linda Linville**  
Erie County, Millcreek Twp.

**Joseph Talarico**  
President, Butler County  
Democrats for Change

**Eric Seggi**  
Staff Representative  
NABET, CWA

**Mark A. DiVecchio**  
Erie County Executive

**Ronald "Whitey" Cleaver**  
Erie Co. Councilman, 4<sup>th</sup> District

**Rubye Jenkins-Husband**  
President, Erie City Council

**Jessica Horan-Kunco**  
Erie City Councilman

**Jim Walczak, Esq.**  
Erie County, North East Twp.

**Sue Beard**  
Former Aid Coordinator,  
Erie Weed and Seed

**Daria Reymore**  
Erie County, City of Erie

**Rodger Gregorich**  
Capt., PA State Police (Retired)  
Former Troop Com., Troop E, Erie

**Brian McGrath**  
Millcreek Township Supervisor

**Tina Fryling, Esq.**  
Erie Co., Wattsburg Borough

**Joe Maloney**  
Erie Co., Millcreek Township

**Bill Beardsley**  
Tax Collector,  
North East Borough

**Ed Brennan**  
Warden, SCI-Albion, Ret.

**Dale Niemenski**  
Business Manager,  
Operating Engineers Local #66

**George Sommer**  
Business Rep  
Sheet Metal Workers Local #12

**Robert Merski**  
Erie County Sheriff

**Casimir Kwitowski**  
Erie City Controller

**Jim Thompson**  
Erie City Councilman

**Dan Harmon**  
Business Manager,  
Plumber & Steamfitters Local #47

**Dale Roth**  
Erie County, Harborcreek Twp.

**Bob Tullio**  
Erie County, City of Erie

**Al Wood**  
Chairman,  
Corry Democratic Party

**Steve Smith**  
Erie County, City of Erie

**Carl J. Anderson III**  
Erie County, City of Erie

**Trevor Pearson**  
Erie County, Harborcreek Twp.

**Denise Fabian**  
Erie County, City of Erie

**Sam Talarico**  
Pres., Iroquois Education Assoc.  
Erie 6<sup>th</sup> Ward Dem. Committeeman

**Chris and Rick Mitchell**  
East Erie Co. Dem. Committee

**Jim Young**  
Former U.S. Congressional  
Candidate

**Al Ropelewski**  
City of Erie  
Purple Heart Recipient